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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/447,419	11/23/1999	HARUO TANAKA	040894-5507	3789

9629 7590 11/29/2001

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EXAMINER
SANTIAGO, MARICELI

ART UNIT	PAPER NUMBER
2879	

DATE MAILED: 11/29/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/447,419	TANAKA, HARUO	
	Examiner	Art Unit	
	Mariceli Santiago	2879	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence addr ss --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 September 2001* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 4-11* is/are pending in the application.

4a) Of the above claim(s) *6-11* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4 and 5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☒ The proposed drawing correction filed on *10 September 2001* is: a)☒ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Response to Amendment

The Amendment, filed September 10, 2001, has been entered and acknowledged by the Examiner.

Cancellation of claim 3 has been entered.

Election/Restrictions

Applicant's election with traverse of Group I, claims 1-5 in Paper No. 6 is acknowledged. The Examiner notes there has been no remark/explanation regarding the grounds of traversal. Accordingly, the requirement is still deemed proper and is therefore made FINAL.

Drawings

The corrected or substitute drawings were received on September 10, 2001. These drawings are approved by the Examiner.

Claim Objections

Claim 4 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 4 recites the

limitation "wherein the insulating layer is a porous aluminum oxide layer", the same limitation is previously claimed in amended claim 1 from which claim 4 depends.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a), which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glaser (US 4,303,847) in view of Ohnuma et al. (US 5,118,986).

Regarding claim 1, Glaser discloses a flat panel display comprising a sealing member for sealing the flat panel display structure and covering the panel with the sealing member, wherein the sealing member is made of an aluminum material coated with an insulating layer in its inner surface, the insulating layer being a porous aluminum oxide layer. Glaser discloses the general use of the sealing member in various types of flat panel displays including EL panels. In the same field of endeavor, Ohnuma discloses a common EL device structure comprising a lower electrode formed on a substrate, an organic EL layer formed on the lower electrode, and an upper electrode formed on the organic EL layer. Thus, it would have been obvious at the time the invention was made to a person having ordinary skills in the art to incorporate the organic EL panel disclosed by Ohnuma as the flat panel of Glaser since an EL device is

a well know flat panel structure and Glaser discloses the general suitability of the sealing member for flat panel displays.

The Examiner notes that the claim limitation that "formed by anodic oxidation of the aluminum material" is drawn to a process of manufacturing which is incidental to the claimed apparatus. It is well established that a claimed apparatus cannot be distinguished over the prior art by a process limitation. In spite of the fact that a product-by-process claim may recite only process limitations, it is the product and not the recited process that is covered by the claim. Further, patentability of a claim to a product does not rest merely on the difference in the method by which the product is made. Rather, is the product itself which must be new and not obvious. As such, no patentable weight has been given to the process recited in claim 1 (see MPEP 2113).

The functional language "which functions as an impurity absorber" has not been given patentable weight because it is narrative in form. In order to be given patentable weight, a functional recitation must be expressed as a "means" for performing the specified function, as set forth in 35 U.S.C. § 112, 6th paragraph, and must be supported by recitation in the claim of sufficient structure to warrant the presence of the functional language. *In re Fuller*, 1929 C.D. 172: 388 O.G. 279.

Regarding claim 2, Glaser discloses a flat panel display (see Fig. 2) wherein the aluminum material (Column 4, lines 33-38) is a flexible aluminum sheet (18).

Regarding claim 4, Glaser discloses a flat panel display (see Fig. 2) wherein the insulating layer (16) is a porous aluminum oxide layer (Column 7, lines 16-17).

Regarding claim 5, the Examiner notes that the claim limitation of "the aluminum sheet is formed in such a manner that a surface of the aluminum oxide layer is subjected to gas flow-out treatment in vacuum, and thereafter the lower electrode, EL layer and upper electrode are sealed on the substrate in an atmosphere of inert gas" is drawn to a process of manufacturing which is incidental to the claimed apparatus. It is well established that a claimed apparatus cannot be distinguished over the prior art by a process limitation. In spite of the fact that a product-by-process claim may recite only process limitations, it is the product and not the recited process that is covered by the claim. Further, patentability of a claim to a product does not rest merely on the difference in the method by which the product is made. Rather, is the product itself which must be new and not obvious. As such, no patentable weight has been given to the process recited in claim 1 (see MPEP 2113). Furthermore, it is the position of the examiner that it would have been obvious to one of ordinary skill in the art that the EL device of Glaser-Ohnuma is at least a fully functional equivalent to the Applicant's claimed EL device as evidenced by Glaser-Ohnuma suggestion of all of the Applicant's claimed structural limitations. Further, Glaser discloses all the elements of the flat panel display sealed on the substrate in an atmosphere of inert gas (Column 2, lines 39-63).

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4 and 5 have been considered but are moot in view of the new ground(s) of rejection.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In the instant application the Applicant is claiming a sealing member comprising an aluminum material and an insulating porous aluminum oxide layer. The Examiner notes that sealing members for flat panel displays are well known in the art, and it is not considered hindsight reasoning to search a sealing member comprising the elements claimed.

In response to Applicant's arguments traversing the Examiner's assertion of the limitation in claim 5, specifically the limitation of "the aluminum sheet is formed in such a manner that a surface of the aluminum oxide layer is subjected to gas flow-out treatment in vacuum, and thereafter the lower electrode, EL layer and upper electrode are sealed on the substrate in an atmosphere of inert gas", the Examiner respectfully disagree. In regards to claim 5, the Applicant is claiming the product of an organic EL device including a method (i.e. a process) of sealing the organic EL device, consequently, claim 5 is considered a "product-by-process" claim. In spite of the fact that a product-by-process claim may recite only process limitations, it is the product and not the recited process that is covered by the claim. Further, patentability of a claim to a

product does not rest merely on the difference in the method by which the product is made. Rather, is the product itself which must be new and not obvious. As such, no patentable weight has been given to the process recited in claim 1 (see MPEP 2113).

Consequently, as explained above the Examiner deems the rejection proper.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mariceli Santiago whose telephone number is (703)

305-1083. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nimesh Patel, can be reached on (703) 305-4794. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7382.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

11/14/01
Maricéli Santiago
Patent Examiner
Art Unit 2879

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